

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

VOUTY THOL,

Petitioner,

V.

DOUG WADDINGTON,

Respondent.

Case No. C05-5373RJB

ORDER DENYING MOTION
FOR TRANSCRIPTS; ORDER
DENYING MOTION FOR
CERTIFICATE OF
APPEALABILITY; ORDER
DENYING MOTION FOR
APPOINTMENT OF COUNSEL

This matter comes before the Court on Petitioner's Motion for Transcripts (Dkt. 41), Motion for Certificate of Appealability (Dkt. 42), and Motion for Appointment of Counsel (Dkt. 43). The court has considered the pleadings filed in support of the motions and the file herein. No pleadings were filed in opposition to the motions.

FACTUAL AND PROCEDURAL HISTORY

Petitioner Vouty Thol is an inmate at the Stafford Creek Corrections Center. Petitioner was convicted of first degree attempted murder after a jury trial in Cowlitz County. Dkt. 19, Exh. 5 at 8. On June 21, 2005, Petitioner filed a writ of habeas corpus with the Court pursuant to 28 U.S.C. § 2254, contending that the jury was given an improper instruction on accomplice liability, and that such error was not harmless and mandates reversal. Dkt. 6. On December 21, 2005, U.S. Magistrate Judge Karen L. Strombom issued a Report and Recommendation, concluding that the

1 grounds set forth in Petitioner's habeas petition were without merit. Dkt. 24. On March 30, 2006,
 2 the Court adopted the Report and Recommendation and dismissed the petition. Dkt. 32.

3 Petitioner has now appealed to the U.S. Court of Appeals for the Ninth Circuit (Dkt. 34),
 4 and has requested that this court issue a Certificate of Appealability pursuant to 28 U.S.C. §
 5 2253(c). Dkt. 42. In his motion for a Certificate of Appealability, Petitioner argues that the
 6 district court unreasonably applied U.S. Supreme Court case law when it concluded "the erroneous
 7 accomplice liability instruction was harmless because the evidence established beyond a reasonable
 8 doubt that [Petitioner] was an accomplice." Dkt. 42 at 8. Petitioner has also filed a motion
 9 requesting transcripts and records of all state and district court proceedings, to be paid by the
 10 United States under the Criminal Justice Act. Dkt. 41. Petitioner has also filed a motion
 11 requesting appointment of counsel. Dkt. 43.

12 **STANDARD FOR GRANTING CERTIFICATE OF APPEALABILITY**

13 The district court should grant an application for a Certificate of Appealability only if the
 14 petitioner makes a "substantial showing of the denial of a constitutional right." 28 U.S.C. §
 15 2253(c). To obtain a Certificate of Appealability under 28 U.S.C. § 2253(c), a habeas petitioner
 16 must make a showing that reasonable jurists could debate whether the petition should have been
 17 resolved in a different manner, or that the issues presented were adequate to deserve
 18 encouragement to proceed further. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (*quoting*
 19 *Barefoot v. Estelle*, 463 U.S. 880, 893 n.4 (1983)). When the Court has rejected the constitutional
 20 claims on the merits, "the petitioner must demonstrate that reasonable jurists would find the district
 21 court's assessment of the constitutional claims debatable or wrong." *Slack v. McDaniel*, 529 U.S.
 22 at 484.

23 **DISCUSSION**

24 A. MOTION FOR CERTIFICATE OF APPEALABILITY

25 When issuing its Order adopting the Report and Recommendation, the Court carefully
 26 reviewed the record and determined that Petitioner's claims did not warrant habeas relief. Dkt. 32.
 27 In his request for a Certificate of Appealability, Petitioner raises the same claims that were
 28 carefully reviewed by the magistrate judge, and by this court on *de novo* review. Petitioner has not

1 shown that reasonable jurists could debate whether the petition should have been resolved in a
 2 different manner, or that the issues presented were adequate to deserve encouragement to proceed
 3 further. Therefore, Petitioner's request for a Certificate of Appealability should be denied because
 4 Petitioner has not shown that "jurists of reason would find it debatable whether the district court
 5 was correct in its procedural ruling" that resulted in the dismissal of his habeas petition. *See Slack*
 6 *v. McDaniel*, 529 U.S. at 484; *see also* 28 U.S.C. § 2253(c).

7 B. MOTION FOR TRANSCRIPTS AND MOTION FOR APPOINTMENT OF COUNSEL

8 In a separate motion, Petitioner requests a copy of all transcripts and records of state and
 9 district court proceedings that pertain to his case, and further requests that the copying expenses
 10 be paid by the United States under the Criminal Justice Act. Dkt. 41. Petitioner cites Rule 10 of
 11 the Federal Rules of Appellate Procedure as authority for his request. First, it appears that
 12 Petitioner may have misinterpreted this rule. If the Court of Appeals for the Ninth Circuit desires
 13 these records from the district court, they will make the appropriate request in the appropriate
 14 manner. Second, the Court notes that Petitioner is already in possession of most of these records,
 15 having submitted the state records to the district court pursuant to the Court's Order (Dkt. 26),
 16 and having received copies of all pleadings and orders that were filed with, or issued by, the district
 17 court with regard to Petitioner's habeas proceedings. Third, the Court finds that the interests of
 18 justice do not warrant such an Order regarding expenses at this time. Petitioner's motion should
 19 therefore be denied.

20 In a separate motion, Petitioner also requests the appointment of counsel at the Court's
 21 discretion, pursuant to 18 U.S.C. § 3006(a). After a review of the record, the Court finds that the
 22 interests of justice do not warrant appointment of counsel in this case. *See* 18 U.S.C. §
 23 3006(a)(2)(b). Petitioner's motion should therefore be denied.

24 ORDER

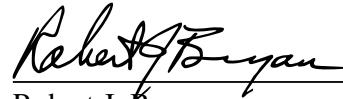
25 Therefore, it is hereby

26 **ORDERED** that Petitioner's Motion for Transcripts (Dkt. 41), Motion for Certificate of
 27 Appealability (Dkt. 42), and Motion for Appointment of Counsel (Dkt. 43) are **DENIED**.

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1 The clerk is directed to send uncertified copies of this Order to all counsel of record and to
2 any party appearing *pro se* at said party's last known address.

3 DATED this 11th day of May, 2006.

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6 Robert J. Bryan
7 United States District Judge
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